IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.298 of 2007
In
Criminal Appeal No.257 of 2007

Sallauddin Nizamudding Ansari — Applicant
Vs.
The State of Maharashtra — Respondent

Ms.Anjali Patil for applicant.
Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 16, 2007.

P.C.

. Heard Ms.Patil, the learned counsel for the appellant - accused no.12 who has been convicted and sentenced by the learned 5th Ad-hoc Addl.Sessions Judge at Sewree. By the said order three Sessions Cases arising from the same incident came to be decided i.e. Sessions Case Nos.391 of 1999, 391 of 1999 and 1402 of 2003. IN all 14 accused were put on trial and accused nos.5 to 11 and 13 have been acquitted. It is thus clear that accused nos.1 to 4 and 12 have been convicted. Accused nos.1 to 4 have not filed any appeal but the present applicant has filed Criminal Appeal No. 257 of 2007.

. Ms.Patil submitted that at the first instance

the accused has been in jail for more than 3 years and 8 months and the highest sentence awarded is 7 years and thus he has undergone more than half of the sentence period. She also referred to the depositions of PW 1, PW 10, PW 13 and PW 15-I.O. and submitted that the identification of the accused no.12 could not be said to be beyond doubt and in any case the accused was taken in custody after about one year or so.

. With the assistance of the learned APP I have gone through the depositions of PW 1, PW 8, PW 13 and PW 15 as well as the depositions of Medical Officer - PW 17. The evidence of these witnesses shows that the accused was identified in the Court and by more than one witness and, therefore, notwithstanding the report of the identification parade, it cannot be at this stage, even prima facie, stated that there was any doubt about the involvement of the applicant.

. On the first ground of having spent more than 3 years and 8 months in jail, it has to be noted that accused nos.1 to 4 are already undergoing sentence. They have not filed any appeal and there is no reason why the present applicant should be released on bail

solely on the ground that he has already spent more than half of the sentence period in jail. Hence the application is rejected.

. Hearing of the appeal is expedited. If the learned counsel for the appellant submits the private paper-book within a period of one month from today, list the appeal for final hearing immediately thereafter.

(B.H.MARL